

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

VICTOR RUIZ,

Case No. 3:23-cv-00354-MMD-CSD

Petitioner,

ORDER

v.

ELKO COUNTY JAIL, *et al.*,

Respondents.

Pro se Petitioner Victor Ruiz has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. (ECF No. 1-1 (“Petition”).) Ruiz did not properly commence this habeas action by either paying the standard \$5.00 filing fee or filing a complete application for leave to proceed *in forma pauperis* (“IFP”). On July 18, 2023, this Court gave Ruiz until September 1, 2023, to either pay the \$5 filing fee or submit a complete IFP application. (ECF No. 3.) On July 31, 2023, Ruiz submitted a new IFP application. (ECF No. 4.) However, it was not clear that his financial certificate had been signed by an authorized prison official (*see id.* at 4), and he did not include a copy of his account statement. Regarding his account statement, Ruiz requested that the Court “call and get it faxed” because “its becoming a hassle to get that information.” (ECF No. 4-1 at 1.) This Court indicated that it was not inclined to waive any requirements regarding Ruiz’s IFP application. Instead, the Court gave Ruiz one more chance to comply. (ECF No. 5.) On August 23, 2023, Ruiz again filed a deficient IFP application, explaining that the Elko County Detention Center, where he is currently housed, refuses to provide a six-month account statement for him. (ECF Nos. 6, 6-1.) This Court appreciates that some county detention facilities, as compared to the Nevada Department of Corrections, may not have

1 a regulated system for providing IFP documents to prisoners. However, because Ruiz's
2 Petition is entirely unexhausted, as is discussed below, this Court declines to give Ruiz
3 another chance to get his six-month account statement and instead dismisses the Petition
4 without prejudice.

5 According to Ruiz's Petition, on May 23, 2023, a judgment of conviction was
6 entered in the Fourth Judicial District Court for the State of Nevada, convicting Ruiz of
7 conspiracy to commit theft. (ECF No. 1-1 at 2.) Ruiz alleges that he appealed his judgment
8 of conviction and that his appeal was decided on July 7, 2023. (*Id.* at 1.) Ruiz also alleges
9 that he filed a state habeas petition, his state habeas petition was denied by the state
10 court, he appealed the denial of that petition, and that appeal was decided on July 7,
11 2023. (*Id.*) Although the Fourth Judicial District Court for the State of Nevada does not
12 have online docket records, meaning that this Court is unable to verify Ruiz's state court
13 information, this Court finds this timeline questionable. First, Ruiz's judgment of conviction
14 was only entered three months ago, and the appellate process takes considerable time.
15 Second, a search of the Nevada state appellate courts' docket reflects that Ruiz has not
16 sought appellate review in any capacity.

17 Habeas Rule 4 requires federal district courts to examine a habeas petition and
18 order a response unless it "plainly appears" that the petitioner is not entitled to relief. This
19 rule allows courts to screen and dismiss petitions that are patently frivolous, vague,
20 conclusory, palpably incredible, false, or plagued by procedural defects. *See Valdez v.*
21 *Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Hendricks v. Vasquez*, 908 F.2d 490,
22 491 (9th Cir. 1990) (collecting cases). Because a federal habeas petitioner incarcerated
23 by a state must give state courts a fair opportunity to act on each of his claims before he
24 presents them in a federal habeas petition, federal courts will not consider his petition for
25 habeas relief until he has properly exhausted his available state remedies for all claims
26 raised. *See Boyd v. Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998). A claim remains
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1 unexhausted until the petitioner has given the highest available state court the opportunity
2 to consider the claim through direct appeal or state collateral-review proceedings.
3 *O'Sullivan v. Boerckel*, 526 U.S. 838, 844-45 (1999); *Peterson v. Lampert*, 319 F.3d
4 1153, 1158 (9th Cir. 2003) (en banc). To properly exhaust state remedies on each claim,
5 the habeas petitioner must "present the state courts with the same claim he urges upon
6 the federal court." *Picard v. Connor*, 404 U.S. 270, 276 (1971).

7 Ruiz has not alleged or demonstrated that he has fully exhausted his state court
8 remedies. See, e.g., *Arevalo v. Hennessy*, 882 F.3d 763, 764-67 (9th Cir. 2018) (finding
9 that a California petitioner properly exhausted his state remedies by filing two motions in
10 the trial court, a habeas petition in the court of appeal, and a habeas petition in the state
11 supreme court, each of which was denied); see also *Braden v. 30th Judicial Circuit Court*
12 *of Kentucky*, 410 U.S. 484, 489-92 (1973) (holding that pretrial detainee in state custody
13 must exhaust available state court remedies for federal court to consider detainee's
14 constitutional claims). As such, Ruiz has outstanding avenues of state court relief,
15 including, but not limited to, motions, petitions for habeas relief, petitions for mandamus
16 relief, and appeals to Nevada's appellate courts. As a matter of simple comity, this Court
17 is not inclined to intervene prior to giving the Nevada appellate courts an opportunity to
18 redress any violation of Ruiz's constitutional rights. See *Coleman v. Thompson*, 501 U.S.
19 722, 731 (1991) (explaining that the exhaustion requirement is "grounded in principles of
20 comity; in a federal system, the States should have the first opportunity to address and
21 correct alleged violations of state prisoner's federal rights"). Accordingly, the Petition is
22 entirely unexhausted, warranting dismissal.¹

23 It is therefore ordered that the Petition (ECF No. 1-1) is dismissed without
24 prejudice. A certificate of appealability is denied, as jurists of reason would not find
25 dismissal of the Petition to be debatable or wrong.

26 ¹If necessary, Ruiz may file a new federal habeas petition in a new action upon
27 exhaustion of his state court remedies.

1 It is further ordered that the motions for leave to proceed *in forma pauperis* (ECF
2 Nos. 1, 4, 6) are denied as incomplete.

3 It is further ordered that the Clerk of Court: (1) file the Petition (ECF No. 1-1); (2)
4 add Nevada Attorney General Aaron D. Ford as counsel for Respondents; (3) informally
5 serve Respondents by sending a notice of electronic filing to the Nevada Attorney
6 General's Office of the Petition (ECF No. 1-1), this order, and all other filings in this matter
7 by regenerating the notices of electronic filing²; (4) enter final judgment dismissing this
8 action without prejudice; and (5) close this case.

9 DATED THIS 25th Day of August 2023.

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12 MIRANDA M. DU
13 CHIEF UNITED STATES DISTRICT JUDGE
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26 _____
27 ²No response is required from Respondents other than to respond to any orders
28 of a reviewing court.